

DEPARTMENT OF SOCIAL SERVICES

14 P Street, Sacramento, CA 95814
(916) 322-2214



December 20, 1983

ALL COUNTY INFORMATION NOTICE NO. 1-136-83

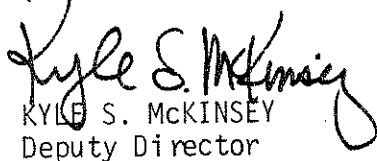
TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: SALDIVAR V. McMAHON - UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, CASE NO. C 83-4637

REFERENCE: ALL COUNTY LETTER NO. 83-110, DATED OCTOBER 21, 1983

On December 9, 1983, Judge Thelton E. Henderson, of the U.S. District Court in San Francisco, granted and signed an Interim Order against the State in the case of Saldivar v. McMahon. A copy of the Interim Order is attached for your information. This order permanently enjoins California from implementing the policy of less than 10-day advance notice for adverse actions. This policy is contained in portions of MR/RB regulations affecting the AFDC, Food Stamp and Refugee Programs.

Detailed instructions concerning the AFDC, Food Stamp and Refugee Programs, forms and notice impact will be issued by December 30, 1983. Should you have any questions, please contact your Food Stamp Program Corrective Action Consultant at (916) 322-5475, or the AFDC Policy Implementation Bureau at (916) 322-5330.


KYLE S. MCKINSEY
Deputy Director

Attachment

cc: CWDA

FILE
Dec 9 4 12 PM '83

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONNA SALDIVAR, et al.,
Plaintiffs,

v.

LINDA McMAHON, et al.,
Defendants.

NO. C 83-4637 TEH

LINDA McMAHON, et al.,
Third-party Plaintiffs,

v.

MARGARET HECKLER, et al.,
Third-Party Defendants.

INTERIM ORDER

The question presented by this class action complaint,^{1/} and heard by the Court on December 2, 1983, in a hearing pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, is whether the policy currently set forth in WMP § 22-022.2(j)^{2/} violates constitutional requirements of due process. For the reasons set forth briefly below, the challenged policy, and use of the hearing rights language on the revised notice of action forms which implements it, are HEREBY PERMANENTLY ENJOINED. A forthcoming memorandum decision will fully explain the

1 ruling announced here. With this interim order, however, the
2 aforementioned injunction is hereby entered.

3 The challenged policy permits county welfare agencies
4 to inform welfare recipients^{3/} of proposed reductions or termina-
5 tions in benefits, less than ten (10) days before the proposed
6 action when (1) the recipient submits a monthly report late
7 (e.g., when a complete monthly report is received after the
8 eleventh calendar day of the month) and (2) the basis for the
9 action is either information contained in the report or the late
10 submission itself. Based on the record before the Court, and
11 for the reasons set forth briefly below, we hold that the policy
12 set forth in MWP § 22-022.2(j), as it is proposed to be imple-
13 mented in California, violates the plaintiffs' due process
14 rights because it significantly increases the likelihood of
15 governmental error in the provision of essential welfare bene-
16 fits, without adequately shielding eligible recipients from the
17 severe consequences of such increased risk of error. Nothing in
18 our consideration of the competing interests presented in these
19 circumstances, see Logan v. Zimmerman, 455 U.S. 422, 434 (1982);
20 Mathews v. Eldridge, 424 U.S. 319, 335 (1976); Goldberg v.
21 Kelly, 397 U.S. 254, 262-63 (1970), sanctions such a burdensome
22 accommodation.

23 Our ruling is based on the following analysis, neces-
24 sarily telescoped for this interim order. As an initial matter,
25 we find little merit in the third-party defendants' challenge to
26 the justiciability of this action. As welfare recipients, the
27 plaintiffs are subject to the operation of the policy which they
28 allege violates their rights to procedural due process; that

1 status and challenge affords them sufficient personal stake in
2 the controversy to assure this Court that they are proper par-
3 tics. See Valley Forge Christian College v. Americans United
4 for Separation of Church and State, Inc., 454 U.S. 464, 474
5 (1982); see also Rochester v. White, 503 F.2d 263, 267 n. 11
6 (3rd Cir. 1974); Committee for Full Employment v. Blumenthal,
7 606 F.2d 1062, 1065, 1065 n. 11 (D.C. Cir. 1979). Additionally,
8 the dispute is sufficiently immediate and concerns matters suffi-
9 ciently certain to defeat the claim of prematurity. Cf. Baker
10 v. Regional High School District No. 5, 476 F. Supp. 319 (D.
11 Conn. 1979). But for this Court's Temporary Restraining Order,
12 the challenged policy would be in effect at present. Moreover,
13 the condition which triggers the policy -- a welfare recipient's
14 late filing of his or her monthly report -- is neither remote,
15 nor speculative. Cf. O'Shea v. Littleton, 414 U. S. 495, 498-99
16 (1974). Finally, we believe that a number of prudential con-
17 cerns, including the hardship occasioned by postponed review for
18 both the State and the plaintiffs, supports our conclusion that
19 present judicial action is appropriate. See Poe v. Ullman, 367
20 U.S. 497, 508-09 (1961).

21 Turning to the merits of the action, we reject the posi-
22 tion advanced by the plaintiffs that the practice of providing
23 timely notice cannot be constitutionally altered in the welfare
24 context. Goldberg v. Kelly, establishes no such proposition.
25 See Harrell v. Harder, 369 F. Supp. 810, 816 (D. Conn.
26 1974) ("The Goldberg Court" "speaks in terms of general
27 procedural requirements designed to protect basic constitutional
28 rights; it does not purport to lay down specific requirements.")

1 Indeed, it is axiomatic that the procedures necessary to meet
2 the fundamental requirements of due process vary with the
3 circumstances involved. Morrissey v. Brewer, 408 U.S. 471, 481
4 (1972) (The concept of due process is a flexible one "and calls
5 for such procedural protections as the particular situation
6 demands.") Even in the welfare context, the constitutional need
7 for timely notice disappears if the elimination of that
8 procedure "neither affect[s] the likelihood of the agency's
9 rendering an erroneous decision nor subject[s] the recipient to
10 brutal need." Barrell v. Harder, 369 F. Supp. at 820; see also,
11 Hurley v. Toia, 432 F. Supp. 1170, 1176 (S.D.N.Y. 1977) ("Of
12 course, if dispensing with a pretermination hearing will not
13 significantly affect the likelihood of the agency's rendering an
14 erroneous decision, due process will not require one.")
15 Accordingly, the proper inquiry for this Court is whether the
16 policy set forth in MMP § 22-022.2(j) significantly increases
17 the likelihood of governmental error, and if so, whether the
18 alternative procedure proposed by the state -- the provision for
19 reinstating benefits -- sufficiently shields eligible recipients
20 from the severe consequences of such error to validate the
21 challenged policy.

22 Our analysis reveals first that the procedures contem-
23 plated by MMP § 22-022.2(j) significantly increase the risk of
24 governmental error in the provision and calculation of welfare
25 benefits. The formal and informal procedures currently
26 available to the recipient and the State to resolve disputes
27 during the advance notice period are eliminated under the policy.
28 Moreover, the policy permits the State to adjust or terminate

1 benefits based on a welfare worker's interpretation of financial
2 data supplied by the recipient, thereby increasing both the risk
3 that "decisions [will be] based on misleading factual premises,"
4 Goldberg v. Kelly, 397 U.S. at 268; see also Cardinale v.
5 Mathews, 399 F. Supp. 1163, 1174 (D.D.C. 1975) ("The accuracy of
6 information is not assured merely because it is submitted by the
7 recipients. . ."), and that the welfare worker will misapply
8 "the rules or policies to the facts of particular cases."
9 Goldberg v. Kelly, 397 U.S. at 268; cf. Harrell v. Harder, 369
10 F. Supp. 810, 820 (approving various exceptions to the timely
11 notice requirement where "the situations described in the
12 exceptions [were]. . . so narrowly circumscribed that the
13 possibility of factual error in the decision whether to
14 terminate [or reduce]. . . benefits. . . [was] virtually
15 non-existent. . .")

16 Second, the State's contention that the policy's provi-
17 sion for reinstating benefits sufficiently shields welfare
18 recipients from the dire consequences of the increased risks of
19 error is belied by the documentation which the State itself
20 submits to the Court. See Declaration of James D. Simon. Based
21 on that data, it appears that about half of the recipients of
22 subsistence-level aid in this state would experience delays of
23 from six to fifteen working days before receiving the promised
24 benefits. Such a lengthy interruption in the provision of essen-
25 tial aid is not countenanced by the Due Process Clause.^{4/} Cf.
26 Morgan v. Maher, 449 F. Supp. 229, 233, 235 (D. Conn. 1979) (To
27 satisfy statutory requirements, the State was ordered to provide
28 emergency assistance to AFDC recipients who sought replacements

1 of missing checks no later than four days after the mailing date
2 of the lost check.) We therefore reject the State's position
3 that the policy's provision for reinstating benefits insulates
4 plaintiffs from the increased risk of loss caused by the
5 proposed practice, and thereby satisfies the demands of due
6 process.

7 We thus hold that the policy set forth in MMP §
8 22-022.2(j), as it is proposed to be implemented in California,
9 violates the recipients' due process rights by significantly
10 increasing the likelihood of governmental error in the provision
11 of essential welfare benefits, without adequately shielding
12 eligible recipients from the severe consequences of such increas-
13 ed risk of error. In so ruling, we accept the possibility that
14 the State could devise a state-wide mechanism to quickly dis-
15 burse reinstatement benefits, similar to that now in place in
16 the "intake" counties. Such a mechanism would likely decrease
17 the period of interrupted benefits sufficiently to meet the
18 requirements of due process. At present, however, no such
19 system is in place, and accordingly,

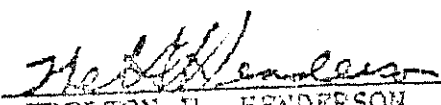
20 IT IS HEREBY ORDERED that the policy set forth in MMP §
21 22-022.2(j) is PERMANENTLY ENJOINED as violative of the plain-
22 tiffs' due process rights.

23 IT IS FURTHER ORDERED that use of the hearing rights
24 language on NA 960X, NA 960Y and the universal back, language
25 reflective of the enjoined policy, is also ENJOINED from use.
26 So enjoined are the following instructions: 1) "if you believe
27 this action is wrong, you can ask for a State Hearing. See the
28 back of this notice for instructions . . ."; 2) "You may re-

1 ceive continued benefits if you ask for a hearing by the 10th
2 day after the Date of Notice or before the Effective Date of
3 this Action, whichever gives you more time. . ."

4 IT IS SO ORDERED.

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7 DATED: December 9, 1983


THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

FOOTNOTES

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2 1/The class was certified in this action on November 8, 1983.
3 See Order Certifying Class Action and Appointing Class Counsel,
C 83-4637 TEH.

4 2/In relevant part, MMP 22-022.2(j) provides:
5 Timely notice [i.e. ten days advance notice] is not
6 required . . . although the county shall send adequate notice as
soon as possible but no later than the effective date of the
action [when]:

7

8 (j) the county receives a complete Monthly Eligibility
9 Report (CA7) after the eleventh calendar day of the report month
and the county's action to discontinue or decrease aid is a
10 result of the information on the CA7 or the recipient's failure
to submit a timely or complete report of earnings without good
11 cause. . . .

12 3/The plaintiffs in this action receive welfare benefits
from any of three assistance programs jointly run by the State
and federal governments: Aid to Families with Dependent
13 Children (AFDC), Refugee Cash Assistance (RCA), and Food Stamps
(FS).
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15 4/We find the Fifth Circuit's suggestion to the contrary in
Barrett v. Roberts, 551 F.2d 662, 665-69 (5th Cir. 1977),
16 unpersuasive.
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